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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

RONALD ALLEN SMITH, Petitioner, v. MICHAEL MAHONEY, Warden, Montana State Prison, Respondent.	Cause No. CV-198-M-CCL **RESPONSE IN OPPOSITION TO PETITIONER'S MOTION TO ALTER OR AMEND JUDGMENT**

The Attorney General of the State of Montana, on behalf of Respondent Michael Mahoney, submits the following response in opposition to Petitioner Ronald Allen Smith's motion to alter of amend judgment.

On March 31, 2007, Smith made a motion pursuant to Fed. Rule Civ. P. 59(e) to alter or amend this Court's March 20, 2007 Order granting summary judgment to

Respondent. Amendment or alteration is appropriate under Rule 59(e) if (1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law. School Dist. No. 1J, v. AC & S, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). This showing is a "high hurdle." Weeks v. Bayer, 246 F.3d 1231, 1236 (9th Cir. 2001). A judgment is not properly reopened "absent highly unusual circumstances." Id.

Here, Smith does not argue that newly discovered evidence or an intervening change in law supports his motion. He fails to assert, much less demonstrate, this Court made any error. Instead, Smith reasserts the same arguments he raised in his Petitioner's Brief in Response to the Respondent's Motions to Dismiss and for Summary Judgment. Regarding the delays which predicated his dismissed Claim 3, Smith again blames the State, just as before. (Pet'r Br. Resp. Resp't Mot. Dismiss & Summ. J. at 26.) Regarding dismissed Claim 8, Smith once again wrongly argues that the state courts denied him a full and fair opportunity to develop his claim regarding Judge Larson's media contacts, and Smith again requests this Court's permission to investigate the matter. (Pet'r Br. Resp. Resp't Mot. Dismiss & Summ. J. at 32, 34.) Under dismissed Claim 16, Smith again re-raises the same attack against Montana's sentencing process by re-asserting that any fact which could result in an increased sentence requires a jury determination. (Pet'r Br. Resp. Resp't Mot. Dismiss & Summ. J. at 39-40, 42.) Smith insists on repeating the erroneous argument that the Supreme Court made retroactive pronouncements in Blakely v. Washington, 542 U.S.

296 (2004) (invalidating state sentencing guidelines that increased a defendant's sentence based on facts found by a judge by a mere preponderance of the evidence). (Pet'r Br. Resp. Resp't Mot. Dismiss & Summ. J. at 27 n.5.) Rule 59(e) motions cannot be used "to repeat old arguments previously considered and rejected." Nat'l Metal Finishing Co. v. Barclaysamerican/Commercial, Inc., 899 F.2d 119, 123 (1st Cir. 1990); accord Fuller v. M.G. Jewelry, 950 F.2d 1437, 1442 (9th Cir. 1991) (concluding district court did not abuse its discretion by denying the motion for reconsideration that merely reargued issues the court had already considered and rejected).

Quite simply, Smith's motion to alter of amend judgment does not bring forth any new evidence, nor does it raise manifest errors or novel theories of law that would warrant reconsideration of this Court's March 20, 2007, Order granting Respondent's motion for summary judgment. Because Smith merely restates arguments that were raised previously, this Court should deny his motion to alter of amend judgment.

Respectfully submitted this 16th day of April, 2006.

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By: /s/ C. MARK FOWLER
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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2007, an accurate copy of the foregoing Response in Opposition to Petitioner's Motion to Alter or Amend Judgment was served on the following persons by the following means:

1, 3 CM/ECF
2 Mail

1 Clerk, U.S. District Court

2 Mr. Gregory A. Jackson
Attorney at Law
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3 Mr. Don Vernay
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DATED: April 16, 2007

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